IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3659 of 2001
with
SPECIAL CIVIL APPLICATION NO. 3797/2001, 3684/2001, 3798/01

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANDAVRAIJI FILLING STATION

Versus

INDIAN OIL CORPORATION LTD.

Appearance:

1. Special Civil Application No. 3659 of 2001
MR. N.D. NANAVATI, LD. SR. COUNSEL WITH
MR TUSHAR MEHTA for Petitioner No. 1

MR. K.S. NANAVATI, LD. SR. COUNSEL WITH
MR. CHUDGAR for Respondents

2. Special Civil Application No. 3797 of 2001
MR. N.D. NANAVATI, LD. SR. COUNSEL WITH
MR. KETAN D. SHAH
MR. K.S. NANAVATI, LD. SR. COUNSEL WITH
MR. CHUDGAR for respondents

3. Special Civil Application No. 3684 of 2001
MR. P.G. DESAI with MR. HRIDAY BUCH for
the petitioner
MR. K.S. NANAVATI, LD. SR. COUNSEL WITH
MR. CHUDGAR for the respondents

4. Special Civil Application No. 3798 of 2001
MR. N.D. NANAVATI, LD. SR. COUNSEL WITH
MR. DEVANG VYAS for the petitioner
MR. K.S. NANAVATI, LD. SR. COUNSEL WITH
MR. CHUDGAR for the respondents.

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 9/11/2001

C.A.V. JUDGEMENT

M/s. Mandavraiji Filling Station-petitioner has filed this petition under Articles 226/227 of the Constitution of India challenging the notice dated August 4, 2000 issued by the Indian Oil Corporation Limited respondent No. 1 (hereinafter referred to as the `IOC') herein and also challenged that though actual order of termination has not been passed by the respondent No. 1, the petitioner reliably learnt that an order terminating the dealership agreement of the petitioner would be passed and challenging the said action of the respondent the petitioner has filed this petition.

2. The facts giving rise to this petition are as under:

2.1 The petitioner is a dealer of the respondent Indian Oil Corporation Limited. The petitioner has been granted dealership of retail out-let for sale of motor spirit (petrol) and high speed diesel at village Sara, Taluka Muli, District Surendranagar and he is carrying on business of dealership of retail out-let of respondent No. 1 which is a `B' site retail outlet.

2.2 It has been stated that the petitioner had applied for and is granted licence for sale of petroleum products under the provisions of the Gujarat Essential Articles (Licensing, Control & Stock Declaration) Order, 1981 (hereinafter referred to as `Licence Order). The Civil Supply authorities had visited one retail outlet known as "Shree Jai Somanth Trading Company" situated at Wankaner Boundary, Taluka Wankaner, Dist. Rajkot. The Civil Supply authorities took statements of the employees

of the said retail outlet. The Civil Supply authorities checked the retail outlet on 28.4.2000. When they visited the retail outlet of the petitioner, they carried out a test known as `Density Test' which is the test to arrive at substantive satisfaction as to whether there is any adulteration in the petroleum products. However, it appears that the density test carried out by the Civil Supplies authorities showed that the petroleum products, namely, motor spirit and high speed diesel, conformed to the standards specified under the law. However, the Civil Supplies authorities on specific information that solvent was being mixed to motor spirit (petrol) and high speed diesel thus adulterated, carried out raid on 28.4.2000 and passed an order of seizure and sealed the retail outlet.

2.3 Being aggrieved by the said action, the petitioner filed Special Civil Application No. 4406 of 2000 before this court.

2.4 During the pendency of the aforesaid petition, the samples collected were sent for laboratory inspection. The respondent Civil Supplies Authorities pointed out before this court that they have received test results of high speed diesel and the said product is found to be matching with requirements specified under law. In view of the same this court was pleased to pass order on 24.5.2000 directing the authorities who were respondents in the said writ petition to lift the seizure order qua high speed diesel latest by 26.5.2000. So far as the samples of motor spirit are concerned, this court permitted the petitioner to get the same tested through an approved laboratory.

2.5 In view of the same, the District Collector passed an order lifting seizure qua diesel on 25.5.2000. On 29.5.2000 the proprietor of the petitioner-firm came to be detained under the provisions of the prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act.

2.6 The petitioner filed an application on 16.6.2000 before the District Supply Officer, Surendranagar, requesting the said authority that two samples given to the petitioner under clause (V) of the Central Government Control Order of 1998 may be sent by the said authority to any of the approved laboratories. IOC was not a party to the proceedings.

2.6 On 20.6.2000 the District Supply Officer, Surendranagar, informed the petitioner that it is for the

petitioner to get the same tested as per the order dated 29.5.2000 and therefore the said authority will not send the samples for testing. The authorities also directed the petitioner to get the samples tested by themselves. Thereafter the petitioner purports to have sent the samples for testing/analysis to IOC - Gujarat Refinery, Vadodara.

2.7 IOC issued show cause notice on 4.8.2000 to the petitioner seeking explanation as to why action should not be taken including termination of the dealership. Again on 21.8.2000 IOC issued another show cause notice as to why the action in accordance with the dealership agreement should not be taken including termination of dealership on the ground that the petitioner has committed breach of the provisions of Motor Spirit and High Speed Diesel (Prevention of Malpractice in Supply and Distribution) Control Order, 1998 and the proprietor of the petitioner firm Shri Prafulbhai M. Koticha is detained under PBM Act.

2.8 It is the contention of the petitioner that the samples which were given to the petitioner were sent by the petitioner to the laboratory approved under the Central Government Control Order of 1988. The petitioner received a report dated 6.11.2000. However it is the contention of the respondent that analysis report from IOC, Gujarat Refinery, Vadodara dated 6.11.2000 is forged and fabricated one and for that IOC has filed affidavit in reply. It has been stated by Shri G. Sarkar that his signature on the said report is forged and it is not his signature.

2.9 On 23.11.2000 the petitioner wrote a letter to the District Collector, Surendranagar, requesting him to require the respondents to start supply of high speed diesel. On 25.11.2000 the petitioner replied to the show cause notice stating that the samples analysed by laboratory of IOC (Gujarat Refinery) have passed as per the report and that the dealership should not be terminated when samples have failed for the first time.

2.10 The District Supply Officer, Surendranagar, passed an order on 24.1.2001 suspending licence of the petitioner for a period of 90 days.

2.11 Being aggrieved and dissatisfied with the aforesaid order the petitioner filed appeal before the District Collector, Surendranagar and the District Collector has granted stay against the order of suspension qua HSD only. The period of suspension was

over on 23.4.2001.

2.12 The District Supply Officer addressed a letter to the IOC to restart supply of petrol and diesel to the petitioner. The Mamlatdar, District Chotila, by his letter dated 11.5.2001 requested the IOC to restart supply to the petitioner.

2.13 In view of the same, the present petition has been filed for a direction to the IOC to supply petroleum products to the petitioner and prohibit the IOC from terminating the dealership agreement. The same was filed on 17.5.2001 and on 18.5.2001 rule was issued by the vacation court. Notice as to interim relief made returnable on 13.6.2001 and in the meantime the IOC is directed not to terminate the dealership.

2.14 An application under Article 226(3) of the Constitution of India was filed by the IOC for vacating ad-interim relief.

3. Shri N.D. Nanavati, learned senior counsel with Mr. Tushar Mehta, learned advocate appeared on behalf of the petitioner. It may be noted that along with this Special Civil Application other Special Civil Applications, namely, Spl. C.A. No. 3684 of 2001 filed on behalf of Mahavir Petroleum raising identical question where Mr. P.G. Desai instructed by Mr. Hriday Buch, Special Civil Application No. 3797 of 2001 where Mr. N.D. Nanavati, ld. senior counsel instructed by Mr. Ketan D. Shah and Spl. C.A. No. 3798 of 2001 where also Mr. N.D. Nanavati, learned senior counsel instructed by Mr. Devang Vyas, were filed. As these writ petitions raise the main question regarding dealership contract and threatened action of the IOC to terminate the dealership, I have heard these matters together.

4. Shri N.D. Nanavati, learned senior counsel for the petitioner, has invited my attention to the record of the case. He submitted that IOC is a `State' within the meaning of Article 12 of the Constitution and in any way it is an agency and instrumentality of the State and therefore the respondent IOC cannot act arbitrarily and unreasonably. If the action of the respondent IOC is arbitrary per se or unreasonable, the writ petition under Article 226 of the Constitution is maintainable. He has also contended that this is a case of agency/dealership of supply of petroleum products of IOC by the petitioner and when the contract is entered into by the petitioner with the respondent IOC, the petitioner has spent money

to erect petrol pump, erect tanks for storage of petrol and employed staff and has taken due care to see that no untoward incident happened particularly question of fire and other incidents etc. He therefore submitted that the petitioner is not merely an agency of the respondent IOC but an agent who has great interest in the subject matter of property i.e. dealership and petrol pump. He has therefore relied on Section 202 of the Contract Act which provides as follows:-

> "Sec. 202 - Termination of agency, where agent has an interest in subject matter - Where the agent has himself an interest in the property which forms the subject matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest."

5.1 In this case the petitioner has interest in the subject matter of agency and therefore in any view of the matter the respondent authority may not terminate the contract.

5.2 He has also relied on a copy of the petition filed Central Gujarat Petrol & Diesel Dealers Association Vs. State of Gujarat being Special Civil Application No. 8803 of 1999 and the order of this court (Coram: M.R. Calla, J) dated 11.4.2000. The relevant portion is given as under:

> "In the facts of the present case, no such blanket direction as have been sought in the petition can be issued by this court. With regard to the part of grievance that the Octane level is not known to the dealers at the time when they receive the supply from the Oil Companies, it needs to be clarified that henceforth the respondents would inform the concerned Oil Companies to indicate the Octane level in the petrol/diesel at the time when the supply is made so that in case the Octane level does not conform to the requisite standards, the liability may be fixed for appropriate action to be taken against the concerned party. Accordingly, the respondents would henceforth instruct the concerned Oil Companies to indicate the Octane level at the time of supply of petrol/diesel to the concerned dealers. In case any of the Circulars or guidelines as issued by the Civil Supplies and Consumer Affairs Department are found to be violated by any of the

dealers, they will be vulnerable to the such action as the respondents may deem proper in accordance with law. With the observation and direction as aforesaid, this Special Civil Application is hereby dismissed."

5.3 He has also relied on the Marketing Discipline Guidelines, namely, preamble clause (2) which provides for adulteration, as given in the MDG, implies wilful debasing of products/materials by adding other/or inferior substances with mala fide intention affecting the end use. In this case, provision of termination in the second instance itself is provided.

5.4 Chapter I provides duties of Oil Companies handling of MS/HSD/SKO AT COMPANY'S STORAGE POINTS. The relevant clauses are reproduced hereinbelow:

"Clause 1(a) - All storage points shall carry out quality control checks as laid down in the Industry Quality Control Manual at every stage of product handling to ensure that the product released meets the standard specifications.

(b) Water dips shall be taken to check presence of water in storage tanks and remedial measures be taken wherever necessary.

(c) Quality Control checks shall be recorded in the standard quality control formats in line with the Quality Control Manual."

5.5 He further submitted that though this writ petition is in the realm of contract the respondent is a "State" within the meaning of Article 12 of the Constitution of India and respondent is supplying petrol and diesel which is monopolistic item and if the action of the respondent is arbitrary and unreasonable, this court has power to interfere with under Article 226 of the Constitution.

5.6.1 Learned senior counsel Mr. P.G. Desai relied on the following authorities in support of their contention that even if in contractual matters, when there is violation of Article 14 of the Constitution, this court has jurisdiction under Article 226 of the Constitution.

5.6.1. R.D. SHETTY VS. INTERNATIONAL AIRPORT AUTHORITY reported in AIR 1979 SCA 1628. On page 1634 at para 7 the Hon'ble Supreme Court has observed thus:-

"We must, in the circumstances, hold that, on a proper construction what paragraph (1) of the notice required was that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to submit a tender. This was a condition of eligibility and it is difficult to see how this condition could be said to be satisfied by any person who did not have five years' experience of running a IInd Class hotel or restaurant."

Again on page 1642 at para the Hon'ble Supreme Court was pleased to observed as follows:-

"Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with the same principle which meets the test of reason and relevance."

5.6.2. MAHABIR AUTO STORES AND OTHERS VS. INDIAN OIL CORPORATION AND OTHERS reported in AIR 1990 SC 1031 in which at para 12 on pages 1036-1037 the Ho'ble Supreme Court has observed as under:

"It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in M/s. Radha Krishna Agarwal Vs. State of Bihar, (1977) 3 SCC 457: (AIR 1977 SC 1496). It appears to us, at the outset, that in the facts and circumstances of the case, the respondent Company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive

power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article can be checked..... Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case."

5.6.3. KUMARI SHRILEKHA VIDYARTHI VS. STATE OF U.P. reported in AIR 1991 SC 537. In this case at paras 20 and 21 on page 549 the Hon'ble Supreme Court has observed as under:

"Para 20 - We have no hesitation in saying that the personality of the State, requiring regulation of its conduct in all spheres by requirements of Article 14, does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist.

Para 21 - We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art. 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion."

5.7 In the light of the above decisions, this petition is maintainable and this court must entertain this petition and when the dealership is still not terminated this court may also grant injunction restraining the respondents from terminating the contract/dealership.

5.8 He further submitted that the petitioner has a prima facie case in its favour and balance of convenience also lies in favour of the petitioner. He also submitted if the supply of petrol and diesel is discontinued, where admittedly there is no adulteration, not only the petitioner is suffered but the rural public is deprived of supply of diesel and petrol and therefore balance of convenience lies in favour of the petitioner. He further submitted that if the contract/dealership is terminated the petitioner will suffer irreparable injury and hardship which cannot be compensated in terms of money because the livelihood of the petitioner will be destroyed. He further submitted that this court has discretion to grant injunction in this behalf. He submitted that though the power to grant injunction is a discretion but the discretion has to be exercised in accordance with the judicial principles. He submitted for granting injunction, three principles are required. He submitted that in view of all the three principles of granting injunction, viz. the petitioner has made out a prima facie case and the balance of convenience lies in favour of the petitioner. He further submitted that if injunction is not granted, the petitioner will suffer irreparable injuries in this behalf. Therefore, injunction as pressed for which was granted earlier may be continued till further hearing of the petition. He also submitted that the analysis report is also in favour of the petitioner.

6. Mr. K.S. Nanavati, learned senior counsel instructed by Chudgar, ld. counsel for the respondent submitted that IOC has filed a detailed affidavit in this behalf. On the basis of the said affidavit in reply he has contended that (1) the analysis report given by the Gujarat Refinery is false and fabricated one. The signatory of the said analysis report has written a letter stating clearly that he has not signed the same report and his signature is a forged one. He has also filed an affidavit in this regard before this court.

6.1 To counter this, the petitioner has produced a letter dated 10.10.2000 purporting to be a covering letter sending the sample for analysis to the Gujarat Refinery. The said letter bears an endorsement of receiving the sample by the P.A. to CTSM, Mr. U.K. Roy. The said PA to CISM has written a letter stating that she has never received the sample nor the said letter dated 10.10.2000 and that the signatures are forged. He has further submitted that the petitioner has tried to produce forged documents before this court and

has tried to mislead the court and therefore the petitioner is not entitled to any relief. He further submitted that termination order is yet not passed and therefore the petition is premature. No reasons at present are available as to on what ground the apprehended termination order would be passed and the petitioner is premature. He further submits that the rights and obligation between the parties are governed by the contract and as per clause 58 of the Contract, IOC can take appropriate action including termination. The dispute being in the realm of contract, under Article 226 of the Constitution, this court would not interfere when the proposed action is not arbitrary or unjustifiable which may shock the conscience of this court.

6.1(a) He has also relied on Civil Application No. 5890 of 2001 filed by IOC for vacating ex-parte interim relief granted by this court on 18.5.2001 and also documents produced by the IOC in this behalf.

6.2 Learned counsel for the respondent further submitted that it is no doubt, true that under Articles 226 and 227 of the Constitution this court may have limited jurisdiction even though the disputes are under the realm of the Contract Act. He further submitted that in any view of the matter, this court may not grant interim injunction in realm of contract particularly when the proceedings are pending before the authorities and the orders are interim orders in the realm of contract. In support of the same, he has relied on the following decisions:

6.2.1. TATA CELLULAR VS. UNION OF INDIA reported in (1994) 6 SCC 651 in which on page 687 at paragraph 94 the Hon'ble Supreme Court has observed as follows:-

"The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, with the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contact. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

6.2.2. AIR INDIA LTD. Vs. COCHIN INTERNATIONAL AIRPORT LTD. reported in 2000(1) Scale 346 in which on page 351 at para 7 the Hon'ble Supreme Court has observed thus:-

"The law relating to award of a contract by the State, its corporations and bodies acting as instrumentalities and agencies of the Government has been settled by the decision of this Court in R.D. Shetty Vs. International Airport Authority (1979) 3 SCC 488, Fertilizer Corporation Kamgar Union Vs. Union of India (1981) 1 SCC 568, Asst. Collector, Central Excise Vs. Dunlop India Ltd. (1985) 1 SCC 260), Tata Cellular Vs. Union of India (1994) 6 SCC 651, Ramniklal N. Bhutta Vs. State of Maharashtra (1997) 1 SCC 134 and Raunaq International Ltd. Vs. I.V.R. Construction Ltd. (1999) 1 SCC 492. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are of paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. It can enter into negotiations before finally

deciding to accept one of the offers made to it. Price need not always be the sole criterion for awarding a contract. It is free to grant any relaxation, for bona fide reasons, if the tender conditions permit such a relaxation. It may not accept the offer even though it happens to be the highest or the lowest. But the State, its corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision making process the Court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point. The Court should always keep the larger public interest in mind in order to decide whether its intervention is called for or not. Only when it comes to a conclusion that overwhelming public interest requires interference, the Court should intervene."

6.2.3. RAUNAQ INTERNATIONAL LTD. VS. I.V.R. CONSTRUCTION LTD. reported in AIR 1999 SC 393 on page 397 at paragraph 11 and on page 398 at paragraph 15 the Hon'ble Supreme Court has observed as under:

"When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the Court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the Court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by Court intervention, the proposed project may be considerably delayed thus escalating the cost far

more than any saving which the Court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the Court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the Court should not intervene under Article 226 in disputes between two rival tenderers.

Para 15- Where the decision making process has been structured and the tender conditions set out the requirements, the Court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers, the Court should hesitate to intervene."

4. MONARCH INFRASTRUCTURE (P) LTD. VS. COMMISSIONER, ULHASNAGAR MUNICIPAL CORPORATION AND OTHERS reported in (2000) 5 SCC 287 in which at paragraphs Nos. 10, 11 and 12 on pages 291-292, the Hon'ble Supreme Court has observed as under:

"Para 10 - There have been several decisions rendered by this Court on the question of tender process, the award of contract and have evolved several principles in regard to the same. Ultimately what prevails with the courts in these matters is that while public interest is paramount there should be no arbitrariness in the matter of award of contract and all participants in the tender process should be treated alike. We may sum up the legal position thus:

(i) The Government is free to enter into any contract with citizens but the court may interfere where it acts arbitrarily or contrary to public interest.

(ii) The Government cannot arbitrarily choose any person it likes for entering into such a relationship or to discriminate between persons similarly situate.

(iii) It is open to the Government to reject even the highest bid at a tender where such rejection is not arbitrary or

unreasonable or such rejection is in public interest for valid and good reasons.

Para 11 - Broadly stated, the courts would not interfere with the matter of administrative action or changes made therein, unless the Government's action is arbitrary or discriminatory or the policy adopted has no nexus with the object it seeks to achieve or is mala fide.

Para 12 - If we bear these principles in mind, the High Court is justified in setting aside the award of contract in favour of Monarch Infrastructure (P) Ltd. because it had not fulfilled the conditions relating to clause 6(a) of the Tender Notice but the same was deleted subsequent to the last date of acceptance of the tenders. If that is so, the arguments advanced on behalf of Konark Infrastructure (P) Ltd. in regard to the allegation of mala fides of the Commissioner of the Municipal Corporation in showing special favour to Monarch Infrastructure (P) Ltd. or the other contentions raised in the High Court and reiterated before us are insignificant because the High Court had set aside the award made in favour of Monarch Infrastructure (P) Ltd. the only question therefore remaining is whether any contract should have been awarded in favour of Konark Infrastructure (P) Ltd. The High Court had taken the view that if a term of the tender having been deleted after the players entered into the arena it is like changing the rules of the game after it had begun and, therefore, if the Government or Municipal Corporation was free to alter the conditions fresh process of tender was the only alternative permissible. Therefore, we find that the course adopted by the High Court in the circumstances is justified because by reason of deletion of a particular condition a wider net will be permissible and a larger participation or more attractive bids could be offered."

6.2.5 He has also relied on the decision of this court in the case of LARSEN & TOUBRO LIMITED AND ANR. VS. GUJARAT STATE PETROLEUM CORPORATION LIMITED & ORS. reported in 2001(2)/42(2) GLR 934 in which at paragraph 12.3 on page 946 the court has observed as follows:

"It is settled principle of law that approach for judicial review is not an appeal against the administrative decision which is made here in consultation with experts. Judicial review is permissible only against decision-making process and not decision itself. This Court finds itself totally ill-equipped for want of knowledge of technical and financial intricacies in the matter of award of contract for setting up power plant, to come to a conclusion either way that the decision taken by the Managing Committee was erroneous or correct. We also do not find it to be against public interest. It is possible to project an opposite view on the financial and technical opinions formed by the experts and consequent decision taken by the Committee. But that can be no justification to upset their decision, as this court finds the decision to have been taken objectively and bona fide. We have tried to understand the technical and financial information given to us by the parties before us, and we have tried to scrutinise the record. So far as we have understood, it is not possible for this Court with limited knowledge on the subject to come to a conclusion that the decision taken was either actuated by favouritism or was in utter disregard of public interest."

6.3 He further submitted that the samples drawn by Civil Supply Authority had failed and therefore the licence was suspended by the said authority by order dated 24.1.2001 for a period of 90 days.

6.4 He further also submitted that the proprietor of the petitioner firm was detained under the PBM Act and had to undergo detention for the full term i.e. the detention order was quashed on technical grounds. The above facts were published in newspapers thereby tarnishing the name, image and reputation of the IOC. The Marketing Discipline Guidelines relied by the petitioner to content that it is the first instance and therefore there should not be termination of dealership, do not take away the right of the competent authority of the Oil Company to take appropriate higher punitive action against the erring dealer including termination in the first instance.

6.5 The learned counsel has also stated that when in this case only show cause notice has been issued and the authority has to take final decision. Therefore, in any view of the matter, the present writ petition is not

maintainable at law.

6.6 As against that the learned counsel for the petitioner submitted that in the affidavit-in-reply dated 16.6.2001 filed by Shri Ajay Bishnoi on behalf of the Indian Oil Corporation Ltd., in paragraph No. 18 it has been decided that respondent Corporation has decided to terminate the contract and therefore in any view of the matter the present petition challenging the action of the Corporation is maintainable.

6.7 The learned counsel for the Indian Oil Corporation has submitted, on the strength of the affidavit, the contentions which I have earlier set out. Over and above, he has also relied on provisions of the agreement particularly an agreement which provides arbitration and he stated that in any view of the matter, the parties must be relegated to arbitration. The said para 4.6 of the affidavit is on page 61. He submitted that the report which has been relied on by the petitioner itself is fabricated and forged report and therefore this court may not grant any relief to the petitioners in this behalf. He has also relied on clause 58 of the Contract, particularly, sub-clauses (h), (i), (j) and (m) for terminating the contract. He has also relied on the guidelines issued by the Corporation. He further submitted that when the transaction between the petitioner and the respondent is of commercial nature and therefore this court should not interfere under Article 226 of the Constitution particularly the proceedings are at interim stage and no final decision has been taken. In this regard, the learned counsel for the respondent has placed reliance on the decision of the Hon'ble Supreme Court in the case of CENTRAL BANK OF INDIA VS. ROOPLAL BANSAL reported in (1999) 9 SCC 254 in which on page 255 at paragraph No. 6, the Hon'ble Supreme Court has observed as under:-

"In our opinion, the High court was not right in entertaining the writ petition. The transaction between the parties was purely a commercial one. Admittedly, the respondent had stood as guarantor in respect of the loans which had been advanced by the appellant. For the realisation of the amount, the appellant had filed a suit in a court of competent jurisdiction. If the respondent had any grievance in respect of the letter dated 7.10.1986, then the proper remedy available to the respondent was to file a Civil Suit and the High Court ought not to have entertained a writ petition under Article 226 of the Constitution

especially when disputed questions of fact had to be gone into. On this ground alone, the judgement of the High Court is liable to be set aside."

6.8 He has further relief on the decision of the Hon'ble Supreme Court in the case of KOYILERIAN JANAKI AND OTHERS VS. RENT CONTROLLER (MUNSIFF) CANNANORE AND OTHERS reported in (2000) 9 SCC 406 in which on page 409 at paragraph No. 4, it is observed thus:-

"Further we are in agreement with the argument of learned counsel for the appellant that it was not appropriate for the High Court to have interfered with the order passed by the District Judge in exercise of its power under Article 227 of the Constitution. The proceedings in the present case arose under a special Act governing the landlord and tenant relationship and disputes. The Act does not provide any second appeal or revision to the High Court. The purpose behind for not providing such remedy is to give finality to the order passed under the Act. The power under Article 227 is exercisable where it is found by the High Court that due to a certain grave error an injustice has been caused to a party. For this reason also, the judgement of the High Court deserves to be set aside."

6.9 In my view when the motor spirit and high speed diesel is found to be adulterated and the analysis report which is sought to be produced is forged and fabricated as also the petitioner has been detained under PBM Act, the petitioner desires no sympathy from this court and therefore the petitioner has failed to make out a prima facie case in their favour. The petitioner has also failed to prove that irreparable injury will be suffered by the petitioner and will ensue the general public if general public is deprived of IOC products. IOC can always install a new petrol pump in the vicinity of the same area and care of the general public can be taken into consideration. In my view the person who is adulterating petrol and diesel and he has been detained under PBM Act, cannot be allowed to carry on business. The court will have to take a strict view of the matter when the person found to be adulterating petrol in this behalf.

6.10 In my view on the basis of the submissions made by the learned counsel for the petitioner it is no doubt true that IOC is `State' within the meaning of Article 12

of the Constitution and the court has jurisdiction in contractual sphere. However, in view of the judgement of the Hon'ble Supreme Court in the case of Tata Cellular (supra), Air India Ltd. (supra), Raunaq International Ltd. (supra), Monarch Infrastructure (P) Ltd. (supra) and Division Bench decision of this court in Larsen and Toubro Ltd. (supra) this court has a very extremely limited jurisdiction under Article 226 of the Constitution of India when the parties are under contractual sphere. In my view once the IOC has demonstrated that the analysis report given by the Gujarat Refinery, Vadodara is false and fabricated which has been amply proved by them and when there is a serious allegation against the petitioner that motor spirit and high speed diesel is found to be adulterated and the petitioner has also been detained under PBM Act, this court is extremely reluctant to exercise its jurisdiction under Articles 226/227 of the Constitution in favour of such petitioner. In any view of the matter, the petitioner has failed to prove a prima facie case and the petitioner has also failed to prove that irreparable loss, injury, loss or hardship will be suffered if interim relief as prayed for is not granted. On the other hand the IOC has been able to prove that if interim relief is granted it will suffer irreparable loss, injury, reputation and goodwill of the IOC and therefore injunction as prayed for may not be granted in favour of the petitioner. It is no doubt true that if the existing petrol pump is closed, the general public is deprived of petrol but the IOC can install a new petrol pump in the vicinity and care of the general public can be taken into consideration. In my view a person who is adulterating petrol and diesel and who has been detained under PBM Act cannot be allowed to run business of petrol in this behalf. Court will have to take a strict view of the matter when the person is adulterating petrol.

6.11 In my view in light of the above observation, the present petition filed by the petitioner is liable to be rejected.

6.12 It may be true that order passed by the authority under PBM Act has been quashed by this court on the technical ground but a person who has been detained under PBM Act loses reputation and goodwill in the business market and therefore IOC was perfectly justified in stopping supply of its products to the petitioner in this behalf. It may be noted that the detention of the petitioner has been appeared in the newspaper which will tarnish the reputation of the IOC and therefore the IOC is entitled to take steps of stopping supply of its

products to the petitioner.

7. In my view when the petitioner has tried to produce a report of the Gujarat Refinery which is forged and fabricated which has been clearly proved by the IOC, the petitioner is not entitled to any equitable order from this court regarding injunction. The petition is therefore liable to be rejected with no order as to costs. Interim relief stands vacated.

(K.M. MEHTA, J)
(pkn)

SCA 3797 OF 2001

8.1 Shree Raghuvir Auto Center-petitioner has filed this petition for a writ of mandamus, a writ in the nature of mandamus or direction restraining the respondents , Indian Oil Corporation and its officers from terminating the dealership agreement of the petitioner and causing any obstruction, interference or hurdle in the petitioner-firm's functioning as a retail outlet for high-speed diesel and motor spirit of the respondent Company and further prayed to direct that respondent authority has no authority or power to terminate the dealership agreement of the petitioner-firm.

8.2 The facts giving rise to this petitioner are as under:

8.3 On 28.4.2000 only Jay Somnath Trading Company situated at National Highway No. 8-B at village Thikariyali, Taluka Wankaner was checked by the Police Department and it was alleged that four tankers were found at the said retail outlet. The petitioner is not at all concerned with the said retail outlet or with any of the proprietor of the said retail outlet.

8.4 In pursuance of the said checking dated 28.4.2000, the petitioner's retail outlet was checked on 30.4.2000 by the Civil Supplies Department. It appears that the authorities on specific information that solvent was being mixed to motor spirit (petrol) and high speed diesel carried out raid on 30.4.2000 and passed an order of seizure and sealed the retail outlet.

8.5 On 4.8.2000 a show cause notice was issued to the petitioner by the respondent Indian Oil Corporation stating that the retail outlet has been sealed by the

District Authorities/Law Enforcement Agencies and there is no upliftment of products since last 3 months. The respondent authority required the petitioner to show cause as to why action should not be taken as per the terms and conditions of dealership agreement including termination of dealership.

8.6 On 18.8.2000 the petitioner filed its reply to the show cause notice stating that the samples had not failed and licence is not cancelled nor suspended. On 21.8.2000 second show cause notice was issued to the petitioner by the respondent Indian Oil Corporation to show cause as to why action including termination of dealership should not be taken on the ground that the petitioner has committed breach of MS/HSD (Prevention of Mal Practice in Supply and Distribution) Control Order, 1998 and that the partners of the petitioner firm are detained under PBM Act. The petitioner replied to the said show cause notice informing respondent No. 1 Company that none of the partners of the petitioner company is ever detained either under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act or any other detention of laws and therefore the only ground on which the show cause notice is issued is unsustainable. The reply has not been filed before this court.

8.7 On 5.12.2000 representation of petitioner stating that the samples had not failed is filed. It is also stated that the Civil Supply Authorities have removed the seal and lifted the seizure order.

8.8 On 16.2.2001 the District Supply Officer, Rajkot has passed an order cancelling the Licence of the petitioner firm though the order has not been produced, averments have been made in para 7.

8.9 Special Civil Application No. 2215 of 2001 filed before this court challenging the above order which is disposed of with a liberty to file revision before the State Government which shall be decided in three weeks.

8.10 The learned counsel has raised rival contentions which I have dealt with in the above petition and the learned counsel for the respondent has also relied on several contentions which I have considered.

8.11 In view of the discussion in the above petition, I am of the view that the petitioner has failed to prove prima facie case and therefore, injunction cannot be granted restraining the respondents from terminating

dealership of retail outlet and supply of petrol and diesel to the petitioner.

8.12 In my view when the petitioner has tried to produce a report of the Gujarat Refinery which is forged and fabricated which has been clearly proved by the IOC, the petitioner is not entitled to any equitable order from this court regarding injunction. The petition is therefore liable to be rejected with no order as to costs. Interim relief stands vacated.

(K.M. MEHTA, J)

SCA 3684/2001

9. Mahavir Petroleum-petitioner has filed this petition for a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents, namely, IOC, respondent No. 1 and the General Manager, IOC, respondent No. 2, to supply petroleum products, namely, motor-spirit and high speed diesel, to the petitioner's retail outlet. The petitioner has further prayed that this court may also declare the action of the respondents of not supplying petroleum products, namely, motor spirit and high speed diesel to the petitioner's retail outlet, as arbitrary, capricious, discriminatory and violative of Article 14 of the Constitution of India.

9.1 The facts giving rise to this petition are as under:

9.2 The petitioner is a dealer of the respondent Indian Oil Corporation Limited (IOC). The petitioner's retail outlet is in periphery of 20 kms. of village Thangadh, Dist. Surendranagar. The petitioner has duly applied and is granted licence for sale of petroleum products under the provisions of the Gujarat Essential Articles (Licensing Control & Stock Declaration) Order, 1981. The said order has been issued under the provisions of Essential Commodities Act, 1955 (hereinafter referred to as `the Act'). It has been stated that the Civil Supplies Authorities had visited one retail outlet known as `Shree Jai Somanth Trading Company situated at Wankaner boundary, taluka Wankaner, Dist. Rajkot. The Civil Supplies authorities took statements of employees of the said retail outlet. The Civil Supplies Authorities checked the retail outlet of the petitioner on 28.4.2000. When the retail outlet was checked, the Civil Supplies Authorities had specific

information that solvent was being mixed to motor spirit (petrol) and high speed diesel and therefore they have carried out raid on the said day and passed an order of seizure and sealed the retail outlet. The authority also carried out test known as `Density test' which is the test to arrive at substantive satisfaction as to whether there is adulteration in the petroleum products. It is the case of the petitioner that the density test carried by the Civil Supplies Authorities showed that the petroleum products, namely, motor spirit and high speed diesel, conformed to the standards specified under the law. The Civil Supplies Authorities passed an order of seizure and sealed the retail outlet both motor spirit and high speed diesel.

9.3 Being aggrieved and dissatisfied with the said action, the petitioner filed Special Civil Application No. 4407/2000 before this Court. During the pendency of the aforesaid petition, the samples collected were sent for laboratory Inspection. The respondents-Civil Supplies Authorities pointed out to this court that they have received test results of high speed diesel and the said product is found to be matching with requirements specified under law. This court (Coram: K.M. Mehta, J) was pleased to pass order dated 24.5.2000 directing the authorities who were respondents in the said writ petition, to lift the seizure order qua high speed diesel latest by 26.5.2000.

9.4 So far as samples of motor spirit are concerned, this court permitted the petitioner to get the same tested through an approved laboratory. On 25.5.2000 the District Collector passed an order lifting seizure qua diesel.

9.5 In view of the aforesaid facts and circumstances of the case the petitioner submitted an application dated 16.6.2000 before the District Supply Officer, Surendranagar requesting the said authority that the two samples given to the petitioner under clause V of the Central Government Control Order of 1998 may be sent by the said authority to any of the approved laboratories.

9.6 On 4.8.2000 IOC issued show cause notice to the petitioner seeking explanation as to why the result of the samples drawn had failed and as to why action as per the dealership agreement should not be taken including termination of dealership. IOC also issued another show cause notice on 21.8.2000 seeking explanation as to why the action in accordance with the dealership agreement should not be taken including termination of dealership

on the ground that the petitioner has committed breach of the provisions of the Motor Spirit and High Speed Diesel (Prevention of Malpractice in supply and Distribution) Control Order, 1998 and that the proprietor of the petitioner firm is detained under PBM Act.

9.7 The petitioner sent the samples which were given to him on 6.11.2000 to the laboratory approved under the Central Government Control Order of 1988. The petitioner received the report dated 6.11.2000. It is the contention of the petitioner that though the seizure order has been lifted qua high speed diesel, the respondent authorities were not supplying the same. Therefore, the petitioner was constrained to write a letter dated 23.11.2000 to the District Collector, Surendranagar, requesting him to require the respondents to start supply of high speed diesel as there was no other retail outlet in the periphery of 20 kms.

9.8 The petitioner thereafter replied to the show cause notices dated 4.8.2000 and 21.8.2000 stating that the samples analysed by the laboratory of IOC (Gujarat Refinery) have passed as per the report and that the dealership should not be terminated when the samples have failed for the first time. The District Supply Officer, Surendranagar, passed an order dated 24.1.2001 suspending the licence of the petitioner for a period of 90 days.

9.9 Being aggrieved and dissatisfied with the said action the petitioner filed appeal before the District Collector and stay was granted by the District Collector in this behalf. On 23.4.2001 the period of suspension was over.

9.10 Thereafter, the District Supply Officer by his letter dated 26.4.2001 addressed to the IOC directed to restart supply of petrol and diesel to the petitioner. The Mamlatdar by his communication dated 11.5.2001 requested IOC to restart supply to the petitioner.

9.11 As IOC failed and neglected to supply petroleum products the petitioner filed the present petition on 17.5.2001 praying for a direction to IOC to supply petroleum products to the petitioner and to prohibit IOC from terminating the dealership agreement.

9.12 On 18.5.2001 vacation court issued rule and notice a to interim relief returnable on 13.6.2001 and in the meantime IOC was directed not to terminate the dealership.

9.13 On 11.6.2001 respondent IOC filed an application under Article 226(3) of the Constitution of India for vacating ex-parte ad-interim relief.

9.14 Learned advocate for the petitioner Mr. Prashant Desai along with Mr. Hriday Buch appeared. The learned counsel has already reiterated what is contended by learned senior counsel Mr. N.D. Nanavati in Special Civil Application No. 3659 of 2001 and the learned counsel further reiterated what was stated in that matter because some of the arguments of the petitioners are common in this behalf. The learned counsel has relied on the submission made by Mr. Nanavati, learned senior counsel which I have noted in paras 3, 4, 5.1 to 5.5. The learned counsel for the petitioner Mr. Desai has also reiterated the submissions which I have already noted in that matter in para 5.6, 5.6.1, 5.6.2, 5.7, 5.8. The learned counsel further submitted that though it has been alleged by the IOC in their contention that the analysis report given by the Gujarat Refinery is false and fabricated and the signatory of the said analysis report has written a letter stating clearly that he has not signed the same report and his signature is a forged one. However, before alleging the same, the IOC has not given any opportunity to explain as to why and under what circumstances the said report was submitted. The learned counsel for the respondent had made submissions which I have noted in para 6, 6.1, 6.2, 6.2.1 to 6.2.4, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9.

9.15 In my vew when the petitioner has tried to produce a report of the Gujarat Refinery which is forged and fabricated which has been clearly proved by the IOC, the petitioner is not entitled to any equitable order from this court regarding injunction. The petition is therefore liable to be rejected with no order as to costs. Interim relief stands vacated.

(K.M. MEHTA, J)

SCA NO. 3798/2001

10.1 Meghraj Filling Station-petitioner has filed this petition under Article 226/227 of the Constitution for a writ of mandamus or direction restraining the respondents or its officers from terminating the dealership agreement of the petitioner and causing any obstruction, interference or hurdle in the petitioner-firm's functioning as retail outlet for high-speed diesel and motor spirit of the respondent No. 1 Company. It was

further prayed that this court declares that respondent No. 1 has no competence, jurisdiction, authority or power to terminate the dealership agreement of the petitioner-firm. The petitioner is a proprietary concern. Prior to 1.1.1998, the retail outlet concerned was being managed by respondent No. 1 Company itself as a Company Owned Company Operated (COCO) pump. Respondent No. 1 wanted to give the said retail outlet to a dealer who should be an unemployed person having less than Rs. 50,000/- annually. The proprietor of the petitioner firm participated in the selection process conducted by the Oil Selection Board and was selected for being given the retail outlet. The petitioner is given the retail outlet for motor spirit only with effect from 11.1.1998 by the respondent company.

10.2 The petitioner is dealing in petroleum products being essential commodity, the petitioner duly applied for licence and the same was granted to the petitioner under the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981.

10.3 It has been stated in the petition that on 28.4.2000 the respondent authorities, namely, the Deputy Collector and Mamlatdar along with police personnel, visited the retail outlet of the petitioner. During the surprise checking of the petitioner's retail outlet, no discrepancy was found and in fact the density test was matching and therefore no action was taken by the authority on 28.4.2000. On 30.4.2000 the District Supply Officer prepared a report and submitted the same to the District Collector, the name of the petitioner's petrol pump was not maintained. However, subsequently, the District Supply Officer added the said name in the list stating that the name of the petitioner's petrol pump was also figured in the statement given by Naranbhai Vanmalidas Thakker.

10.4 After adding the name of the petitioner's petrol pump and after lapse of two days from the date of checking i.e. after two days from 28.4.2000 the District Supply Officer and his staff suddenly came to the petitioner's petrol pump and seized the stock of petrol and sealed the petrol pump.

10.5 Being aggrieved by the said action of the District Supply Officer, the petitioner has already filed a petition being Special Civil Application No. 5824 of 2000 which was admitted and is awaiting final decision.

10.6 On 4.8.2000 IOC issued a show cause notice to the

petitioner stating that the retail outlet has been sealed by the District authorities/law Enforcement Agencies and there is no upliftment of products since last three months and why action should not be taken as per the terms and conditions of dealership agreement including termination of dealership. The petitioner replied to the said show cause notice.

10.7 Thereafter, the petitioner made a representation on 5.12.2000 stating that the samples had not failed. It is also stated that the Civil Supply Authorities have removed the seal and lifted the seizure order. The licence was suspended for 90 days by District Supply Authorities. On 16.5.2001 the District Supply Authorities passed an order deciding not to cancel the licence of the petitioner and to continue the licence while forfeiting the deposit only. It has been stated that the petitioner reliably learnt that respondent has taken a decision arbitrarily to terminate the dealership of the petitioner and is likely to despatch the order by 30.5.2001. The petitioner therefore filed this petition on the said ground.

10.8 Learned counsel for the petitioner Mr. N.D. Nanavati along with Mr. Devang Vyas appeared on behalf of the petitioner and they have also merely reiterated what is stated in Special Civil Application No. 3659 of 2001.

10.9 On behalf of the IOC, the learned counsel has stated the following points.

(i) Letter dated 4.8.2000 of Collector indicates that the samples collected on 28.4.2000 have failed.

(ii) The proprietor Shri Arvindbhai Tejabhai Basida, detained under PBM Act and has undergone full period of detention.

(iii) Widely published in newspapers tarnishing image and good name of IOC

(iv) Termination order yet not passed. Therefore petition is premature. No reasons at present available as to on what ground the apprehended termination would be passed. Therefore premature.

(v) The rights and obligation between the parties are

governed by the contract and as per clause 58 of the contract, IOC can take appropriate actions, including termination.

(vi) The dispute being in the realm of contract, under Art. 226, this court would not interfere, when the proposed action is not arbitrary or unjustifiable which may shock the conscience of the court.

10.10 In my vew when the petitioner has tried to produce a report of the Gujarat Refinery which is forged and fabricated which has been clearly proved by the IOC, the petitioner is not entitled to any equitable order from this court regarding injunction. The petition is therefore liable to be rejected with no order as to costs. Interim relief stands vacated.

11. In the result all the petitions are rejected. Ad-interim relief stands vacated. No order as to costs.

(K.M. MEHTA, J)
(pkn)

After pronouncement of the judgement, Mr. N.D. Nanavati, learned senior counsel prays for time. Learned advocate for the respondent has objected to the same. However, in the interest of justice time is granted upto 3.12.2001.

Date: 9.11.2001 (K.M. MEHTA,J)

The learned counsel for the petitioner Mr. Tushar Mehta has requested orally for extension of time upto 19.12.2001. In the interest of justice time is extended upto 19.12.2001.

Date: 29.11.2001 (K.M. MEHTA, J)

(pkn)